

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO.: 410 OF 1999

BETWEEN:

CLAIRE JONES

Claimant

v

MARGARET SHALLOW

Defendant

Appearances:

Mr. Richard Williams with Ms. Roxanne Knights for Claimant

Ms. Rechanne Browne for Defendant

2003: October 21

2004: January 29

JUDGMENT

[1] **BLENNAN, J:** Samuel Browne (deceased) was the sole owner of a parcel of land situate at Fair Hall in the State of Saint Vincent and the Grenadines. He formed a relationship with Ms. Margaret Shallow. During their relationship an unfinished building was constructed on the land. Later Mr. Browne conveyed the property by way of Deed of Gift No. 3424 of 1994 to Ms. Claire Jones.

[2] Ms. Claire Jones seeks a declaration that she is the fee simple owner of a parcel of land, by virtue of the Deed No. 3424 of 1994 and an order preventing Ms. Margaret Shallow her servants or agents from trespassing on the said land. In addition she seeks damages from Ms. Shallow on the basis of trespass.

[3] By way of Defence and Counterclaim, Ms. Margaret Shallow seeks a declaration for the cancellation of Deed No. 3424 of 1994. She also seeks damages resulting from the destruction of the wall house together with general damages and costs.

[4] Ms. Margaret Shallow claims an interest in the property and sought the cancellation of the Deed of Gift. She based her claim on two grounds:

- (i) her contribution to the construction of the building; and
- (ii) a promise from the deceased that he would convey the property in question to herself and their two daughters.

She also disputes the validity of the Deed of Gift.

[5] Three issues arise for determination:

- (i) Whether Margaret Shallow made any financial contribution to Samuel Browne's acquisition of the building that was constructed on the land, alternatively whether she acquired any interest in the property?
- (ii) Whether the deceased's disposition by Deed of Gift of the property to the claimant is valid?
- (iii) Whether Ms. Margaret Shallow has trespassed on the claimant's property?

Financial Contributions

[6] The first issue to be determined is whether Ms. Margaret Shallow made any financial contributions to the deceased's acquisition of the property in question.

She testified that she utilized funds she earned as a domestic and obtained by way of a loan from the Social Welfare contributed to the construction of the building. She asserts that she made valuable contributions to the property and that while Samuel Browne was away in Trinidad and Tobago between 1982 and 1993 she expended her money in this regard. She has not produced any receipts or bills in support of her story. Before the commencement of the house she and Samuel Browne deceased lived in her mother's house at Fair Hall, in a common law union.

- [7] Ms. Claire Jones denies that Ms. Margaret Shallow contributed any money to the construction of the property. Ms. Jones averred that the deceased had commenced the construction of his house with his sole funds.
- [8] Ms. Jones main witness is Louisa Richards. Ms. Richards has filed a witness statement and testified that the building was constructed by Samuel Browne with his sole money on his return to Saint Vincent having lived in England for several years. However, due to financial difficulties which he experienced he was unable to complete it. He went to live in Trinidad and was thereafter able to complete the building. She maintained that the deceased and Ms. Margaret Shallow never cohabited in the unfinished building as man and wife. Rather, that the deceased permitted Ms. Shallow to occupy the unfinished home with their daughters when he left to go and work in Trinidad and Tobago. Her evidence was not shaken under examination.
- [9] Ms. Shallow's evidence in this regard was that in 1982 herself and Samuel Browne commenced building a house which was unfinished. She was unable to give any details in this regard to persuade the Court that she did indeed contribute to the construction of the house. Her evidence in relation to her contribution was vague and imprecise. She was not very convincing in her testimony. Louisa Richards gave evidence to the contrary she is a very credible witness. I am satisfied that she is a witness of truth. She is a very forthright person. Her oral evidence was consistent with her witness statement.
- [10] On this factual issue, I prefer the evidence of Ms. Jones' witness. I believe that the deceased having remigrated from England commenced the construction of the wall house on his land with his exclusive funds. However, he was unable to complete it and left to go and work in Trinidad and Tobago whereupon he permitted Margaret Shallow and their children to reside in the house. I do not believe that Margaret Shallow contributed any money to construction of the house. Accordingly, I find that the deceased was the sole legal owner of the property situate at Fair Hall in the State of Saint Vincent and the Grenadines.

Alternative Interest

- [11] On the second proposition that is the deceased promise to convey the property to Margaret Shallow. Ms. Shallow called a witness Evangelista Thomas in support of her contention Ms. Evangelista Thomas provided a witness statement and gave evidence orally that she heard the deceased say to Ms. Shallow on several occasions that the land belonged to his children. This is at variance with Ms. Shallow's evidence that Samuel Browne gave the property to her and children. Ms. Shallow did not produce any written documentation in support of her oral testimony.
- [12] Evangelista Thomas' evidence does not support her story case that the deceased promised to give the property to her. I do not believe that Ms. Shallow is a witness of truth and I therefore reject her evidence. To buttress my doubt, Ms. Shallow did not provide any documentary evidence in support of her contention. None of the surrounding circumstances are consistent with her assertions of the deceased's promise to convey the property to her. The circumstantial evidence is inconsistent with her allegations. She led no evidence to substantiate her claim other than the vague inconsistent evidence of Evangelista Thomas. I therefore do not accept Ms. Shallow's contention in the alternative that Mr. Browne deceased promised to give her the property.
- [13] The documentary evidence which Ms. Shallow has produced is consistent with the deceased promising to convey the property to their children. This is inconsistent with her oral testimony and leaves serious doubts in the Court's mind as to the truthfulness of her story.
- [14] There is the uncontroverted evidence that by the time Mr. Samuel Browne had returned to St. Vincent and the Grenadines, the Defendant had formed another relationship with another man. I believe that any intention the deceased may have originally had to convey the property to the Defendant would have vanished by the time of her formation of the other relationship.

Validity of the Deed of Gift

- [15] The third issue to be addressed is whether the Deed of Gift is valid. Margaret Shallow contends that the Deed of Gift No. 3424 of 1994 which purports to convey the property to the Claimant is invalid. She bases her submissions on the ground that on 17th day of December 1993 an interlocutory injunction was granted in Suit No. 539 of 1993 prohibiting the deceased from disposing of the property. She asserts that, in clear violation of the court order, the deceased conveyed the property in question by way of the Deed of Gift to Ms. Clare Jones in 1993. Ms. Jones had notice of the injunction and therefore was barred from receiving the property by way of voluntary disposition. She asserts that the Deed of Gift is invalid.
- [16] Ms. Shallow's testified that the injunction was granted on 17th day of December 1993 and served by the bailiff on Samuel Browne deceased on the 29th day of December 1993. There is no evidence before the Court to support her contention that the Ms. Jones was aware of the injunction other than the mere say so of Ms. Shallow. The evidence of Louisa Richards indicates that Ms. Jones was not present when the Bailiff served Mr. Browne with a copy of the Injunction.
- [17] Under cross examination Ms. Shallow admitted that about two weeks after the injunction was obtained she told the deceased that she was not going to pursue it. In addition, she gave evidence that Suit No. 539 of 1993 was never heard. I believe that the Suit No. 539 of 1993 was never pursued. There is no evidence that suit No. 539 of 1993 is extant. Be that as it may, I believe that she having reconciled with the deceased did not prosecute Suit No. 539 of 1993. Louisa Richards, the Claimant's main witness testified that the deceased made the Deed of Gift on 8th December 1999 and it was registered on December 1999.
- [18] Ms. Jones further contends that at the time the deceased executed the Deed of Gift she was financing all of the deceased bills and was providing for his care since from 1993 the deceased had become very ill. He being a man of advanced age had suffered a

stroke. The witness Louisa Richards supports this contention in all material particulars. Under cross examination she was adamant that Ms. Jones provided financial support for the deceased during the years when he was ill and could not work. Louisa Richards gave evidence in support of Ms. Claire Jones and for the most part has proved to be a reliable witness. She has filed a witness statement in the matter and was cross-examined at length on the issue of the Deed of Gift.

[19] The Court finds the evidence of Louisa Richards who stated consistently both in her witness statement and under cross-examination that when the deceased returned to St. Vincent in 1993 very plausible. The deceased was infirm and that by this time the Defendant had formed another association it becomes very important. She was adamant that the deceased had been living away from Saint Vincent in excess of 8 years since he last lived in Saint Vincent in 1984 and did not return until 22nd May 1993, based on the defendant's evidence. There is very important and undisputed evidence that when Samuel Browne deceased returned to Saint Vincent a sick man, she and her sister Veronica took care of him and paid for his maintenance with money obtained from Ms. Claire Jones. I have no reason to disbelieve Louisa Richards.

[20] There is no reliable evidence before this court to conclude that on the date of the registration of the deed of gift, there was an injunction which prevented the deceased's from disposing of the property.

[21] Ms. Shallow gave evidence that the deceased had returned ill from Trinidad and Tobago in 1993 and that she had been forced to leave the home that same year. Under Cross examination she admitted that having left the home in 1993 she formed an association with another man even though she took care of the deceased while living with her mother. The deceased by this time had become quite infirm. Evangelista Thomas stated that she assisted Ms. Shallow to take care of the deceased. Her evidence is vague in material parts. She could not remember whether when she helped to take care of the deceased, he was residing with the Defendant Evangelista Thomas proved to be an unreliable witness.

[22] Failure to prosecute a suit having obtained an injunction is a ground on which a court can properly discharge an injunction without going into the merits of the matter. I find that on the date of the registration of the Deed of Gift there was no prohibition preventing Samuel Browne from disposing of his property.

[23] Having reviewed all of the evidence, I believe that after Samuel Browne returned to St. Vincent an ill man, the relationship between himself and Ms. Margaret Shallow soured as a consequence she left the house at Mesopotamia, St. Vincent. She had moved on with her life. Once the relationship between the deceased and Margaret Shallow ended he conveyed the Mesopotamia property by way of Deed of Gift to the claimant, Ms. Clare Jones who had assisted him financially during his time of great need. I am of the view that the Deed of Gift was valid and lawful, since there was nothing to prevent Mr. Samuel Browne from conveying his property.

Conclusion

[24] In the premises, I will dismiss Ms. Margaret Shallow's counterclaim and enter judgment for Ms. Claire Jones as follows:

- (a) Declaration that Ms. Claire Jones (the claimant) is the fee simple owner of a parcel of land which is subject matter of Deed No. 3424 of 1999
- (b) An injunction restraining Ms. Margaret Shallow, (the Defendant) her servants or agents from trespassing on the land of Ms. Claire Jones' land.
- (c) Costs in the sum of \$3,000.00 to be paid by Ms. Margaret Shallow (the defendant) to Ms. Claire Jones (the claimant) on or before 1st April 2004.

Louise Esther Blenman
HIGH COURT JUDGE